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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/544,781	10/30/2006	Warrick J. Smith	E8280.0045/P045	8244
24998 7590 01/22/2009 DICKSTEIN SHAPIRO LLP 1825 EYE STREET NW Washington, DC 20006-5403				
EXAMINER				
TREYGER, ILYA Y				
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3761				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/544,781

Applicant(s)

SMITH ET AL.

Examiner

ILYA Y. TREYGER

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
4a) Of the above claim(s) 6, 8, 9, 16-18, 21, 22, 35-38 and 44-46 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-5, 7, 10-15, 19, 20, 23-34, 39-43, and 47-49 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on _____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

1. Claims 1, 5, 7, 10-12, 14, 15, 19, 20, 23, 24, 34, 39-41, and 43 are amended.
2. Claims 6, 8, 9, 16-18, 21, 22, 35-38, and 44-46 are canceled.
3. Claims 47-49 are new.
4. Objection of claims 6-35 and 40 is withdrawn based on the Applicant's Remarks, page 8, lines 11-14.
5. Rejection of claims 44-46 under 35 U.S.C. 112, second paragraph is withdrawn based on the Applicant's Remarks, page 8, lines 15-17.
6. Double Patenting rejection is withdrawn in the light of the amendment made to claim 1.
7. Claims 1-5, 7, 10-15, 19, 20, 23-34, 39-43, and 47-49 are examined on the merits.

Response to Arguments

8. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 1-5, 7, 10-15, 19, 20, 23, 25, 32-34, 39, 41-43, and 47-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker et al. (US 6,302,122) in view of McClain (US 5,664,593).

13. In Re claims 1 and 2, Parker discloses the apparatus for automatic application of compositions to the skin (tanning booth) having an internal volume and comprising:

a base portion A (Fig. 1) forming a plenum C (Fig. 1) of negative pressure located in the base of the booth comprising foot grate, and a top portion B (Fig. 1);

an evacuation fan (Col. 15, lines 15-20), which is a recirculating means for recirculating the air within the booth;

active nozzles 51 (Fig. 1), which are projecting means for projecting product into the booth volume onto a body of a person positioned in the booth (Col. 6, line 55);

an air filter (Col. 15, line 16), which is a filtering means for filtering the air within the booth; and

a controller unit having a feedback mechanisms using sensed temperatures (Col. 15, lines 28-31), which is a temperature means for controlling the temperature of air circulating within the booth (claim 2).

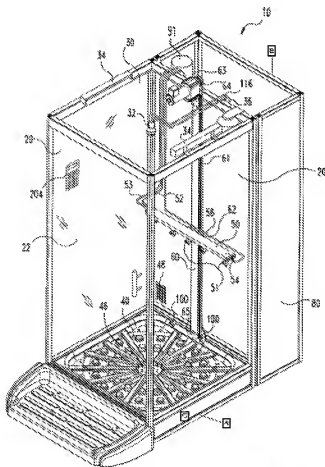


Fig. 1

Parker does not expressly disclose the tanning booth comprising a duct providing the closed recirculation system.

McClain teaches the tanning booth comprising the tube 48 (Figs. 5 and 7) providing the closed recirculation system in the booth (Col. 4, lines 1-32).

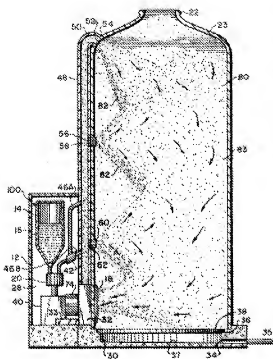


FIG. 5

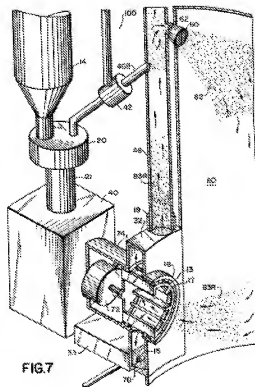


FIG. 7

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the tanning booth of Parker with the recirculation duct, as taught by McClain in order to avoid loss of the lotion (McClain, Col. 2, lines 43-50).

Parker in view of McClain do not expressly disclose the tanning booth comprising the second plenum located on the top of the booth, through which the lotion is dispensed, and the second filter.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to supply the booth with the second plenum and the second filter in order to improve uniformity of the lotion dispensing and filtering features, since it

has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8 MPEP 2144.04 (VI-B)

14. In Re claim 3, Parker in view of McClain disclose the claimed invention discussed above, but do not expressly disclose the particular parameter of the temperature range of the air flow in the booth.

The particular temperature range in the tanning booth depends of the nature of the particular product being disposed into the booth and physical conditions of the particular person to be treated. It would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust the temperature rate in the booth depending of the particular product being disposed into the booth and physical conditions of the particular person to be treated, since discovering the optimum or workable ranges involves only routine skill in the art.

15. In Re claim 4, Parker in view of McClain disclose the claimed invention discussed above, but do not expressly disclose the particular parameter of the air temperature in the booth.

The particular parameter of the temperature in the tanning booth depends of the nature of the particular product being disposed into the booth and physical conditions of the particular person to be treated. It would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust the temperature rate in the booth depending of the particular product being disposed into the booth and physical conditions of the particular person to be treated, since discovering an optimum value of a result effective variable involves only routine skill in the art.

16. In Re claim 5, Parker discloses the apparatus, wherein the temperature means comprises a heater.

In accordance with the definition controlling means “to adjust to a requirement”. Adjusting temperature to the requirement (controlling the temperature), as applied to claim 2 above, requires the presence of the heater.

17. In Re claim 7, Parker in view of McClain disclose the bottom plenum adapted to depressurize air to less than atmospheric pressure and the top plenum to ambient pressure, since the bottom plenum is the plenum of negative pressure and the top plenum is the plenum of positive pressure.

18. In Re claim 10, Parker in view of McClain disclose the tanning booth, wherein the duct comprises a plurality of duct sections (See McClain, Fig. 7).

19. In Re claim 11, Parker discloses the booth, comprising the evacuation fan (Col. 15, line 15).

20. In Re claim 12, Parker in view of McClain disclose the booth, wherein the fan 18 (McClain, Fig. 7), which is a recirculation means, is located within the duct 48.

21. In Re claim 13, Parker in view of McClain disclose the invention discussed above, but do not expressly disclose that diameter of the duct is greater than the diameter of the fan positioned inside of the duct.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the fan of the diameter less than the diameter of the duct the fan is located in, since it was known in the art that any material article has to be of less diameter than the space the article is located in. (MPEP 2144.03 (A-E)).

22. In Re claims 14, 15, 20, and 47-49, Parker in view of McClain disclose the invention discussed above, but do not expressly disclose the booth having the third and the fourth filter.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to supply the tanning booth with the plurality of filters in order to improve filtering features if desired, since it has been held that mere multiplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8 **MPEP 2144.04 (VI-B)**.

23. In Re claim 19, Parker in view of McClain disclose the tanning booth, wherein the filter has an impedance that varies across the filter, since any filtering material comprises anisotropy in the structure.

24. In Re claim 23, Parker in view of McClain disclose the tanning booth, wherein the predetermined volume comprises a portion of the booth volume, since any portion of the booth volume can be predetermined.

25. In Re claim 25, Parker in view of McClain disclose the booth, comprising nozzles, which are air guns, since they are discharged by compressed air (Parker, Col. 15, line 8).

26. In Re claims 32 and 33, Parker discloses a booth comprising a remotely operable tool 50 (Fig. 9) with means 64 (Fig. 9) to automatically transport the tool 50 to provide spraying between two zones in the booth (Col. 10, lines 51-57), wherein the arm 50 is the slider unit supporting spray means 51 moveable vertically along the rail 60 between two positions (claim 33).

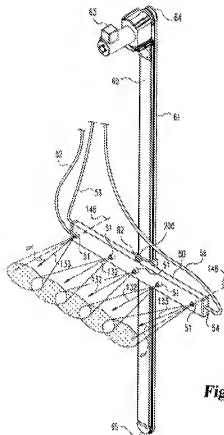


Fig. 9

27. In Re claim 34, Parker discloses a booth comprising nozzles (Col. 6, lines 55) directed to spray product horizontally, which are interpreted as a spray guns (claim 34), since in accordance with definition gun – is a device used to force out (a substance, such as grease or paint) under pressure (See Collins Essential English Dictionary 2nd Edition).

28. In Re claim 39, since the tanning booth is disclosed by Parker in view of McClain for applying a product to a human body, Parker/ McClain disclose a method for applying a product to a human body using a booth discussed above, as applied to claim 1.

29. In Re claim 41, since the tanning booth is disclosed for applying a product to a human body, Parker discloses a method for applying a product to a human body comprising the steps of:

causing air to flow in a downward direction onto the human body and recirculating the air flowing onto the human body (Parker, Col. 15, lines 15-20);

filtering the air to remove wet and dry particulate material (Parker, Col. 15, line 16), wherein the apparatus comprises the plurality of filters (See rationale applied to claim 14);

projecting a product onto the human body (Parker, Col. 6, line 55);

recirculation means (McClain, Col. 4, lines 1-32; Figs. 5 and 7);

providing a projecting means 51 (Parker, Fig. 1) for projecting a product into the booth volume onto the human body, the flow means comprising the first and the second plenum comprising the grates;

recirculating the air flowing onto the human body ((McClain, Col. 4, lines 1-32; Figs. 5 and 7).

30. In Re claim 42, Parker discloses the method comprising the step of controlling the temperature of the air flow (Col. 15, lines 28-31).

31. In Re claim 43, Parker in view of McClain discloses the claimed invention discussed above, but does not expressly disclose a computer program product directly loadable into the internal memory of a digital computer, comprising software code portions for performing the steps of the method discussed above.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the program product as claimed, since if the computer has been used to operate the claimed method, the computer program product directly loadable into the internal memory of a digital computer, comprising software code portions for

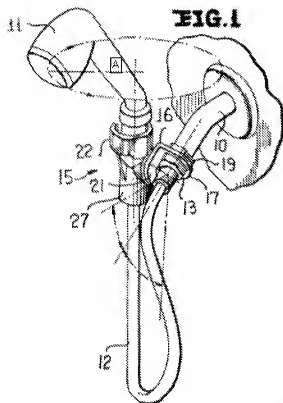
performing the steps of the method discussed above is the mandatory requirement for functioning the computer in the claimed direction.

32.

33. Claims 24, 27-31, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker et al. (US 6,302,122) in view of McClain (US 5,664,593), and further in view of Zieger (US 3,979,096).

Parker in view of McClain disclose the invention discussed above, but do not expressly disclose the tanning booth wherein the projecting means comprises a hand held tool.

34. In Re claims 24 and 27-30 Zieger teaches the shower head, which is the variation of the projecting means, comprising a hand held tool A (Fig. 1), which is an remotely operable tool (claim 27) comprising a plurality of nozzles (claim 28) and means 17 fully capable of adjusting the height of the nozzles (claim 29) and attitude of the nozzles (claim 30).



It would have been obvious to one having ordinary skill in the art at the time the invention was made to supply the projecting means of Parker/ McClain with the hand-held tool, as taught by Zieger in order to convenience operation of the device.

35. In Re claim 31, Parker in view of McClain disclose the invention discussed above, but do not expressly disclose the device wherein the remotely operable tool comprises a nozzle support wherein the nozzles being positioned to spray the product into an area defined by the nozzle support.

Zieger teaches the shower head, which is the variation of the projecting means, comprising a hand held tool A (Fig. 1), which is the remotely operable tool, comprising a nozzle

support wherein the nozzles being positioned to spray the product into an area defined by the nozzle support (See Fig. 1).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to supply the projecting means of Parker/ McClain with the hand-held tool comprising a nozzle support wherein the nozzles being positioned to spray the product into an area defined by the nozzle support, as taught by Zieger in order to convenience operation of the device.

36. In Re claim 40, Parker in view of McClain and Zieger disclose the method for applying a product to a human body using a hand held tool.

37. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Parker et al. (US 6,302,122) in view of McClain (US 5,664,593) and Zieger (US 3,979,096), and further in view of Turner et al. (US 4,611,762).

Parker in view of McClain and Zieger disclose the invention discussed above, but do not expressly disclose the booth, wherein the hand held tool comprises an airless sprayer.

Turner teaches a hand held airless spray gun for emitting the material (Abstract, lines 1-10).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to supply the apparatus of Parker/ McClain/ Zieger with the airless sprayer, as taught by Turner in order to avoid use of the air compressor.

Conclusion

38. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ILYA Y. TREYGER whose telephone number is (571)270-3217. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ilya Y Treyger/
Examiner, Art Unit 3761

/Michele Kidwell/
Primary Examiner, Art Unit 3761